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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,027	01/20/2004	Heike Lerg	100718-392/ Beiersdorf 48	1877
7055	7590	07/18/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			HARDEE, JOHN R	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/761,027	<b>Applicant(s)</b> LERG ET AL.	
	<b>Examiner</b> John R. Hardee	<b>Art Unit</b> 1751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-49 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06272006</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 3, 2006 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 16-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klueppel et al., US 5,145,665. The reference discloses preparations for dental and oral hygiene. These compositions contain alkyl glycosides (abstract). Said glycosides may have a degree of oligomerization of 1. The alkyl group is derived from a primary alcohol of 8-22 carbons (col. 2, lines 11-32). The glycoside is present at 0.1-5% by weight (col. 2, lines 52-54). Humectants may be added to the compositions, including propylene glycol (col. 3, line 28). Use of butylene glycol, a one-carbon homolog of propylene glycol, would be expected by the person of ordinary skill in the surfactant art to provide similar properties. Additional humectants include water-soluble Carbopols. Examiner takes the position that this teaching embraces crosslinked materials. No specific

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concentration of polymer is disclosed, but 0.40-1.5% of polymer is exemplified in the formulation examples. Exemplification of a gel tooth cream makes obvious the formulation of gels. Addition of polishing substances (solids) and liquids such as flavorings and water is disclosed at col. 3, lines 9-19 and is exemplified. Addition of 5-15% of glycerol is disclosed at col. 3, lines 48-49. Use of flavorants, disclosed at col. 3, line 12, would act as perfumes. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because patentees teach that all of the components claimed by applicant are suitable for inclusion in a tooth-cleaning composition. Regarding the recitation of copolymers, examiner maintains the position that the teaching in the reference of "carboxyvinyl polymers" may be fairly construed to embrace carboxyvinyl copolymers in view of the teaching of the utility of the Carbopol polymers as a class, which includes copolymers. Applicant discloses at p. 7, lines 23-25 of the specification that the Carbopols include acrylate-alkyl acrylate copolymers. Applicant's recitation of shampoo and shower preparations is a statement of intended use, which is afforded little patentable weight.

4. Claims 16-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giret et al., US 5,409,640. The reference discloses personal cleansing products. Said compositions preferably contain a polymeric skin or hair conditioning agent. Among the anionic polymers taught as useful are the Carbopols (col. 8, lines 12-20). Amounts of

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anionic polymer are not disclosed, but examiner takes the position that amounts at the low end of applicant's recited range are customary in the art, and therefore obvious. Compositions further comprise 0.1-20% of a nonionic or betaine surfactant. Among the nonionics disclosed as suitable are alkyl polysaccharides bearing an alkyl group of 8-18 carbons. Alkyl monosaccharide is preferably present as well at 20-70% of the total saccharide content (col. 6, lines 42-46). Inclusion of about 3% to about 40% of moisturizers, including glycerol and propylene glycol, is disclosed at col. 8, lines 43-44. Glycerol is highly preferred. Use of butylene glycol, a one-carbon homolog of propylene glycol, would be expected by the person of ordinary skill in the surfactant art to provide similar properties. Addition of perfume is exemplified. Preparation of emulsions, which comprise droplets of embedded liquid, is exemplified. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation. It would have been obvious at the time the invention was made to make such a composition, because the reference teaches that all of the components claimed by applicant are suitable for inclusion in a personal care composition. Applicant's recitation of shampoo and shower preparations is a statement of intended use, which is afforded little patentable weight.

### ***Response to Arguments***

5. Applicant's arguments filed July 3, 2006 have been fully considered but they are not persuasive. Applicant argues that there is no motivation to pick carboxyvinyl polymers out of a list of possible viscosity regulators. This is not persuasive because the

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motivation arises from the disclosure that any or all of these regulators is suitable for the disclosed purpose. If applicant can demonstrate that this is not the case, via timely filed affidavit evidence, such would be afforded patentable weight. Regarding the choice of an alkyl monoglucoside, the mono material is specifically disclosed in both references as useful. The exemplified glucoside of Klueppel, with a degree of oligomerization of 1.2, is mostly monoglucoside. Any glucoside within the preferred oligomerization range of Giret, 1.5 to 4, would include substantial amounts of the monoglucoside, especially at the lower end of the preferred range. Regarding which monoglucoside is used, applicant is encouraged to submit affidavit evidence which demonstrates that this makes a difference, thereby contradicting the teaching of the general utility of monoglucosides. Flavorants act primarily as perfumes, as most of the taste of a product derives from its odor.

Applicant's recitation of "consisting essentially" scope does not overcome the rejections, because both the prior art compositions and the claimed compositions are cleaning compositions. It is hard to see why the additional ingredients of the prior art compositions would affect the "basic and novel" aspects of applicant's compositions.

6. In order that applicant be able to file an affidavit in a timely fashion, this rejection is NOT FINAL.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through

Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Douglas McGinty, may be reached at (571) 272-1029.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized, cursive script.

John R. Hardee  
Primary Examiner  
July 5, 2006